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AUM CAPITAL SDN BHD v. MENARA UOA BANGSAR MANAGEMENT CORPORATION

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COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN N PARAMAGURU JCA
AHMAD ZAIDI IBRAHIM JCA
COLLIN LAWRENCE SEQUERAH JCA
[CIVIL APPEAL NO: W-02(IM)(NCvC)-1651-09-2022]
10 JANUARY 2024

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Abstract – *The Strata Titles Act 1985 ('STA') and the Strata Management Act 2013 ('SMA') assign the responsibility and management of a common property to the management corporation. In order to fulfill these duties, the management corporation requires funding and this is established through a maintenance account authorised by both the STA and SMA. Based on the relevant scheme of legislation, 'common property' is primarily determined by its location.*

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LAND LAW: *Management corporation – Common property – Electricity and maintenance of centralised air-conditioning facilities – Maintenance corporation bore electricity and maintenance costs of centralised air-conditioning facilities – Preliminary determination of questions of law – Whether duty and management of 'common property' fell upon management corporation – What constitutes 'common property' within relevant scheme of legislation – Whether centralised air-conditioning facilities common property – Strata Management Act 2013 – Strata Titles Act 1985 – Common Property (Maintenance and Management Act) 2007*

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STATUTORY INTERPRETATION: *Definition – 'common property' – Whether centralised air-conditioning facilities common property – Strata Management Act 2013 – Strata Titles Act 1985 – Common Property (Maintenance and Management Act) 2007*

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The appellant was the registered proprietor of one of the parcels in, while the respondent was the management corporation of, Menara UOA Bangsar. Menara UOA Bangsar was a mixed development property which comprised individual parcels in Towers A and B, retail parcels in the podium and carparks. The respondent paid for the electricity and maintenance of the centralised air-conditioning facilities ('CACF') which supplied chilled air to the: (i) common properties of Towers A and B and the carparks; and (ii) the private parcels of Tower B and the retail area. The appellant launched a suit against the respondent, at the High Court, premised upon the issue of whether the latter should maintain the CACF at its own expense, including bearing the electricity and maintenance costs. The respondent applied for

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preliminary determination of questions of law, pursuant to O. 14A and/or O. 33 r. 2 of the Rules of Court 2012, namely: (i) whether components of the CACF, which were not comprised in any individual parcel of Menara UOA Bangsar, formed part of the 'common property' of Menara UOA Bangsar, as defined under s. 2 of the Strata Management Act 2013 ('SMA'), even if the utility or benefit of the CACF accrued in part to one or more proprietors and/or occupiers of private parcels ('question (1)'); (ii) if the answer to question (1) was in the affirmative, whether the statutory duty imposed by s. 59(1)(a) of the SMA on the respondent, as the management corporation, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, required the respondent to bear the costs and expenses of operating and maintaining the CACF, including the electricity and maintenance costs ('question (2)'); (iii) whether the respondent was empowered under the relevant laws, including the SMA, and obliged to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the CACF, including the electricity and maintenance costs, solely for the benefit of a particular private parcel owner, namely UOA Real Estate Investment Trust ('UOA REIT') ('question (3)'); (iv) whether the respondent was negligent in failing to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the CACF, including the electricity and maintenance costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the CACF within Tower B ('question (4)'); and (v) in the event the answer to questions (1) and/or (2) were in the affirmative, the respondent shall take all necessary steps to determine the sum for a full reimbursement of the costs and expenses of maintaining the CACF, including the electricity and maintenance costs against DATS Management Sdn Bhd and/or Desa Bukit Pantai Sdn Bhd and/or Peninsular Home Sdn Bhd and/or UOA Asset Management Sdn Bhd and/or RHB Trustee, taking into account the duration and amount of the expenses involved and setting off the contribution made by UOA REIT, if any ('question (5)'). The High Court, deciding in favour of the respondent, answered questions (1) and (2) in the affirmative and questions (3) to (5) in the negative. Hence, the present appeal.

Held (dismissing appeal)
Per Collin Lawrence Sequerah JCA delivering the judgment of the court:

(1) Based on s. 43 of the Strata Titles Act 1985 ('STA') and 59 of the SMA, the duty and management of 'common property' falls upon the management corporation. In order for the management corporation to carry out such duties, funding is required and for that purpose, a maintenance account is established and this is provided under s. 44 of the STA and s. 50 of the SMA. The next question of relevance was what

A constituted 'common property' within the relevant scheme of legislation? Based on the flavour of the definitions in s. 4 of the STA, s. 2 of Building and Common Property (Maintenance and Management Act) 2007 and s. 2 of the SMA, what amounts to 'common property' is almost exclusively defined by reference to location. It could clearly be B seen from the plans of the buildings and photographs of the CACF that Tower B was located outside of any private parcels. The CACF thus had to be logically defined as 'common property' within the scheme of the relevant legislation. (paras 19-29 & 32-33)

(2) The respondent was statutorily duty-bound by s. 59(1)(a) of the SMA to C properly maintain and manage the common property and keep the same in a state of good and serviceable repair. It would also require them to bear the costs and expenses of operating the CACF which included the electricity and maintenance costs involved. It followed that: (i) the respondent, as the management corporation, was entitled to use monies D from the maintenance account to maintain the CACF as common property under the SMA; and (ii) there was no legal obligation on the part of the respondent, as the management corporation, to pursue or claim for any reimbursement for the maintenance costs paid utilising the maintenance account funds. (paras 35-37)

E **(3)** The answer to both questions (1) and (2) had to be in the affirmative. Questions (3) to (5) were answered in the negative. (paras 34 & 53)

Case(s) referred to:

Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***

Perbadanan Pengurusan 3 Two Square v. Two Square Sdn Bhd & Anor And Another F *Appeal [2019] CLJU 2281; [2019] 1 LNS 2281 CA* ***(refd)***

Young v. Bristol Aeroplane Co Ltd [1944] KB 718 ***(refd)***

Legislation referred to:

Building and Common Property (Maintenance and Management Act) 2007, s. 2

Rules of Court 2012, O. 14A, O. 33 r. 2

G Strata Management Act 2013, ss. 2, 50, 59(1)(a), (3)(b), 60

Strata Titles Act 1985, ss. 4, 44, 43, 171

For the appellant - Lai Chee Hoe, Ooi Xin Yi & Goh Peng Hong; M/s Lai, Goh & Assocs
For the respondent - Ganesan Nethi & Daniel Tan Wee Xian; M/s Tommy Thomas

H *[Editor's note: For the High Court judgment, please see AUM Capital Sdn Bhd v. Menara UOA Bangsar Management Corporation [2022] CLJU 2091; [2022] 1 LNS 2091 (affirmed).]*

Reported by Najib Tamby

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JUDGMENT

Collin Lawrence Sequerah JCA:

Introduction

[1] This appeal is against the decision of the High Court on 5 August 2022 in allowing the management corporation's (respondent) application for preliminary determination of questions of law under O. 14A and/or O. 33 r. 2 of the Rules of Court 2012 ("O. 14A application").

[2] The subject matter of the High Court Suit filed by AUM Capital (appellant) (a parcel proprietor in Menara UOA Bangsar) against the management corporation (of Menara UOA Bangsar) is whether the management corporation should maintain the centralised air-conditioning facilities ("CACF") at its own expense, including bearing the electricity and maintenance costs thereof.

[3] There were five questions of law were put forward before the High Court. Questions 1 and 2 were proposed by the management corporation while questions 3 to 5 were proposed by AUM Capital as follows:

> Question 1. (Management Corporation)
>
> Whether components of the Centralised Air-Conditioning Facilities which are not comprised in any individual parcel of Menara UOA Bangsar, form part of the "common property" of Menara UOA Bangsar as defined under Section 2 of the Strata Management Act, 2013 ("2013 Act") even if the utility or benefit of the Centralised Air-Conditioning Facilities accrues in part to one or more proprietors and/or occupiers of private parcels?
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> Question 2. (Management Corporation)
>
> If the answer to Question (1) is in the affirmative, whether the statutory duty imposed by Section 59(1)(a) of the 2013 Act on the Defendant [management corporation], as the management corporation of Menara UOA Bangsar, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, requires the Defendant [management corporation] to bear the costs and expenses of operating and maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof.
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> Question 3. (Aum Capital)
>
> Whether the Defendant [management corporation] is empowered under the relevant laws (including the 2013 Act) and obliged to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the Centralised Air-Conditioning Facilities within Tower B of Menara UOA Bangsar?

A Question 4. (Aum Capital)

Whether the Defendant [management corporation] is negligent in failing to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance
B costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the Centralised Air-Conditioning Facilities within Tower B of Menara UOA Bangsar?

QUESTION 5. (AUM CAPITAL)

In the event the answer to Question 1 and/or 2 above is the affirmative,
C the Defendant [management corporation] shall take all necessary steps to determine the sum for a full reimbursement of the costs and expenses of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof against DATS Management Sdn Bhd and/or Desa Bukit Pantai Sdn Bhd and/or Peninsular Home Sdn Bhd and/or UOA Asset Management Sdn Bhd and/or RHB Trustee,
D taking into account the duration and amount of the expenses involved, and setting off the contribution made by UOA REIT, if any.

[4] The High Court decided the case in favour of the management corporation (respondent), answering the questions 1 and 2 in the affirmative and questions 3 to 5 in the negative.

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Factual Background

[5] The management corporation of Menara UOA Bangsar, is a body corporate established on 5 June 2013 pursuant to s. 171 of the Strata Titles Act 1985.

F **[6]** AUM Capital is the registered proprietor of 1 of the 440 parcels in Menara UOA Bangsar.

[7] Menara UOA Bangsar is a mixed development property which contains 440 stratified parcels. The development has two office towers, 1
G retail block and one car park comprising:

(i) 426 individual parcels in office Tower A ("Tower A");

(ii) three individual parcels in office Tower B ("Tower B");

(iii) nine retail parcels in the podium ("retail"); and

H (iv) two parcels consisting of one parcel of multi-storey elevated car parks and one parcel of basement car parks (collectively referred to as the "carparks").

[8] All but three of the parcels in Tower B, retail and the car parks are
I beneficially owned by the UOA Real Estate Investment Trust ("UOA REIT") under the management of UOA Asset Management Sdn Bhd. These parcels are registered in the name of RHB Trustee Berhad as the trustee for UOA REIT.

[9] Of the remaining three parcels not owned by UOA REIT:

(a) one of the three parcels in Tower B (Lot No. 14) and one of the nine parcels in Retail (Lot No. 9) are owned by one Angkasa Restu Sdn Bhd ("Angkasa Restu"); and

(b) one of the other nine parcels in retail (Lot No. 3) is owned by Desa Bukit Pantai Sdn Bhd, which is leased to the management corporation for use as the management office for Menara UOA Bangsar at a nominal rental until 26 November 2016.

The Centralised Air-Conditioning Facilities ("CACF")

[10] The CACF of Menara UOA Bangsar provides chilled air to:

(i) Tower A, which contains:

(i) one cooling tower located at the rooftop area of Tower B;

(ii) a chiller plant room, consisting of two trane chillers, located at Level 8 of the podium at the car parks; and

(iii) 62 chilled water fan coil units, two units on each of the 31 floors between Level 9 to Level 39, for the lift lobbies area.

[11] The chilled air generated from the above machinery is channelled through ventilation ducts, serving the lift lobbies and common corridors located in the common property of levels 9 to 39 of Tower A.

[12] Each of the 426 office private parcels in Tower A has split individual unit air-conditioning facilities in each respective parcel and is paid for by the individual parcel owners because it does not form part of the common property of Tower A.

Tower B, The Retail Area And The Car Parks

These comprise of the following:

(i) three cooling towers located at the rooftop area of Tower B;

(ii) a chiller plant room, consisting of four trane chillers, at Level 8 of the podium at the car park;

(iii) ten chilled water fan coil units on four floors of the basement carpark to cater to the lift lobbies;

(iv) 13 chilled water fan coil units on 6 floors of the elevated car park to cater to the lift lobbies;

(v) 56 chilled water fan coil units on three floors of the retail area at the podium, that is, 51 units to cater to the retail area, and five for the lift lobbies; and

(vi) 270 chilled water fan coil units at Tower B, that is, 17 units on each of the 15 floors between Level 9 to Level 23, to cater to the office areas and one unit on each of the 15 floors to cater to the lift lobbies.

[13] The chilled air generated from the above machinery is channelled through ventilation ducts, serving the common property (lift lobbies and corridors) and private parcels at Tower B, private parcels at the retail area, and the common property at the car parks.

[14] The management corporation pays for the electricity and maintenance of the CACF, which supplies chilled air to the:

(i) common property of Towers A and B;

(ii) the common property in the car parks; and

(iii) the private parcels of Tower B and in the retail area.

Parties Contentions

Appellant (AUM Capitals)

[15] AUM Capital's position is that the management corporation should not be maintaining the CACF at its own expense because, although the CACF is located on common property and capable of being enjoyed by all parcel proprietors in Menara UOA Bangsar, these facilities are enjoyed to a greater extent by a few parcel proprietors than by the rest of the Menara UOA Bangsar parcel proprietors.

[16] AUM Capital's claims that the management corporation has unlawfully utilised the money in the maintenance account to pay for the maintenance of the CACF and sought to compel the management corporation to seek full reimbursement of all monies/sums paid by the management corporation towards the maintenance of the CACF.

Respondent (Management Corporations)

[17] The management corporation takes the position that the CACF should be maintained by it as it forms part of the common property of Menara UOA Bangsar.

Analysis And Decision

[18] The starting point in our analysis must surely lie first in the consideration of what are the duties and powers imposed upon the management corporation and thereafter, what amounts to common property within the scheme of the relevant legislation.

Duties And Powers Of Management Corporation

[19] The Strata Titles Act 1985 and s. 43 thereof states as follows:

> 43. (1) The duties of the management corporation include the following:
>
> (a) to manage and properly maintain the common property and keep it in a state of good and serviceable repair;

[20] Section 59 of the Strata Management Act 2013 reads:

> Duties and powers of management corporation 59(1) The duties of a management corporation shall be as follows:
>
> (a) to properly maintain and manage the subdivided building or land and the common property and keep it in a state of good and serviceable repair;

[21] It is abundantly clear from the above that the duty and management of "common property" falls upon the management corporation.

[22] In order for the management corporation to carry out such duties, funding is required and for that purpose a maintenance account is established.

[23] The Strata Titles Act 1985 and s. 44 thereof states as follows: "management fund

> 44. (1) The management corporation shall establish a management fund sufficient in the opinion of the management corporation to meet the administrative expenses as may be incurred for the purposes of controlling, managing and administering the common property, paying rent, rates and premiums of insurance and discharging any other obligation of the management corporation.

[24] Section 50 of the Strata Management Act 2013 states:

> Developer to establish maintenance account in the name of management corporation
>
> Section 50
>
> (3) The maintenance account shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters:
>
> (a) maintaining the common property in good condition on a day-to-day basis;
>
> (b) paying for the expenses in providing cleaning services for the common property, security services and amenities for the occupiers of the building.

[25] The next question of relevance is what constitutes "common property" within the relevant scheme of legislation?

[26] Section 4 of the Strata Titles Act 1985 defines "common property" as follows:

> "common property" means so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan;

[27] Section 2 of the Building and Common Property (Maintenance and Management Act) 2007 defines common property as follows:

> "common property", in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the structural elements of the building, stairs, stairways, fire escapes, entrances and exits, corridors, lobbies, fixtures, and fittings, lifts, refuse shutes, refuse bins, compound drains, water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational area, driveways, car parks, and parking areas, open spaces, landscape areas, walls and fences, and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building;

[28] Section 2 of the Strata Management Act 2013 ("SMA 2013") defines common property as follows:

> common property
>
> (a) in relation to a building or land intended for subdivision into parcels, means so much of the development area:
>
> (i) as is not comprised in any parcel or proposed parcel; and
>
> (ii) used or capable of being used or enjoyed by occupiers of two or more parcels or proposed parcels; or
>
> (b) in relation to a subdivided building or land, means so much of the lot:
>
> (i) as is not comprised in any parcel, including any accessory parcel, or any provisional block as shown in a certified strata plan; and
>
> (ii) used or capable of being used or enjoyed by occupiers of two or more parcels;

[29] As can be noticed from the flavor of the above definitions referred to, what amounts to "common property" is almost exclusively defined by reference to location.

[30] This was recognised and alluded to by the learned High Court Judge ("HCJ") in her grounds of judgment.

[31] So, in relation to question no. 1 posed, the next relevant question is where is the CACF in Tower B located?

[32] It can be clearly seen from the plans of the building and photographs of the CACF, that it is located outside of any private parcels.

[33] The CACF thus has to be logically defined as "common property" within the scheme of the relevant legislation. A

[34] The result of this is that the answer to both question No. 1 and question No. 2 has to be in the affirmative.

[35] The management corporation of Menara UOA Bangsar is thus statutorily duty bound by s. 59(1)(a) of the Strata Management Act 2013 to properly maintain and manage the common property and keep the same in a state of good and serviceable repair. It would also require them to bear the costs and expenses of operating and the CACF which includes the electricity and maintenance costs involved. B C

[36] It follows that the management corporation is therefore entitled to use monies from the maintenance account to maintain the CACF as common property under the SMA 2013.

[37] It also follows that there is no legal obligation on the part of the management corporation to pursue or claim for any reimbursement for the maintenance costs paid utilising the maintenance account funds. D

[38] The express wording of s. 59(3)(b) of the 2013 Act empowers a management corporation to recover "any money expended" in performing any "repairs, work or act" if "the repairs, work or act were or was wholly or substantially for the benefit of some of the parcels only ..." E

[39] The act of Menara UOA Bangsar in making payment of the electricity charges for the CACF benefits the common property and some of the parcels and not some of the parcels only as the CACF benefits the: F

(i) common property of Towers A and B;

(ii) common property in the car parks; and

(iii) private parcels of Tower B and the retail area.

[40] As the CACF does not benefit some of the parcels only, the management corporation cannot rely on s. 59(3)(b) of the 2013 Act to seek reimbursement from the proprietors of individual parcels at Tower B for the CACF electricity charges paid by the management corporation. G

[41] The interpretation that AUM Capital seeks to place on s. 59(3)(b) of the 2013 Act by totally ignoring or disregarding the phrase "only" is misplaced in the light of the trite and settled principles of statutory interpretation that express words in a statute cannot be simply disregarded because the Parliament does not legislate in vain. H

[42] As submitted by learned counsel for the management corporation, the fundamental tenet of strata law is that common property of a development area is generally taken as a whole regardless of each proprietor's level of use or enjoyment of the common property. I

[43] The natural consequence of this is that the management corporation is statutory obliged to maintain facilities that substantially benefits some but not all parcels, so long as the facilities benefit the common property as well.

[44] Any other interpretation would result in the management corporation having to keep tabs on the different respective usages of the common property by all the parcels in a strata development, and then to seek reimbursement from each of those private parcel owners based on the different extent of their individual "benefits".

[45] We agree with the submission of counsel for the management corporation that the practice of charging different rates of service charges to take into account the specific amount of usage of different elements of common property for example, lifts and swimming pools, does not accord with the legislative intent of the 2013 Act which requires the management corporation to impose a single rate of service charges on all parcels according to their share units, unless those parcels are used for "substantially different purposes" according to s. 60 of the 2013 Act.

[46] We are fortified in our reasoning and indeed bound by the decision of the Court of Appeal in the case of *Perbadanan Pengurusan 3 Two Square v. Two Square Sdn Bhd & Anor And Another Appeal* [2019] CLJU 2281; [2019] 1 LNS 2281 (*"3 Two Square"*).

[47] We say this because of the salutary decision in the case of *Young v. Bristol Aeroplane Co Ltd* [1944] KB 718 followed by our Federal Court in *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645; [1998] 1 MLJ 1, where the rule of judicial precedent was explained as follows:

> The doctrine of *stare decisis* or the rule of judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure subject to certain exceptions affecting especially the Court of Appeal.
>
> The said exceptions are as decided in *Young v. Bristol Aeroplane Co Ltd* [1944] KB 718. The part of the decision in *Young v. Bristol Aeroplane* in regard to the said exceptions to the rule of judicial precedent ought to be accepted by us as part of the common law applicable by virtue of Civil Law Act 1956 *vide* its s. 3.
>
> To recap, the relevant ratio decidenci in *Young v. Bristol Aeroplane* is that there are three exceptions to the general rule that the Court of Appeal is bound by its own decisions or by decision of courts of co-ordinate jurisdiction such as the Court of Exchequer Chamber. The three exceptions are first, a decision of Court of Appeal given per incuriam need not be followed; secondly, when faced with a conflict of past decisions of Court of Appeal, or a court of co-ordinate jurisdiction, it may choose which to follow irrespective of whether either of the conflicting decisions is an earlier case or a later one; thirdly it ought not to follow its own

previous decision when it is expressly or by necessary implication, overruled by the House of Lords, or it cannot stand with a decision of the House of Lords. There are of course further possible exceptions in addition to the three exceptions in *Young v. Bristol Aeroplane* when there may be cases the circumstances of which cry out for such new exceptions so long as they are not inconsistent with the three exceptions in *Young v. Bristol Aeroplane*.

[48] In the *3 Two Square* case, the main issue also centered around the question of the duties of the management corporation in maintaining and operating the cooling tower of the centralised air-conditioning system on common property.

[49] It was held by the Court of Appeal as follows:

[30] On the first point, we find that *the definition of "common property" in s. 4 of the STA defines it by exclusion, that is, common property is simply that which is not comprised in any parcel* (including any accessory parcel), or any provisional block as shown in an approved strata plan. Hence, under s. 4 of the STA, by exclusion, all those areas not comprised in or demarcated as parcels would be common property. Thus, *we agree that the central cooling tower*, lifts and public toilets *in Crest Tower, which do not form part of the strata parcels or any accessory parcel are common property*. The fact that these areas are not demarcated as common property in the strata plan does not mean that they are not common property, After all any demarcation on the strata plan would have been done by the Plaintiff as the developer of 3 Two Square.

[31] And *on the exclusive use argument, we agree with the findings of the learned High Court judge that even though the utility of these facilities accrue substantially (even if not exclusively) to the occupiers of Crest Tower, the cost of maintenance of such facilities cannot be left to the Plaintiff as strata parcel owners in that tower block. As these areas are common property, it would be the obligation of the management corporation to maintain such property* as set out in section 43(1)(a) of the STA, which provides as follows: (1) *The duties of the management corporation include the following*:

(a) *to manage and properly maintain the common property and keep it in a state of good and serviceable repair*;

[32] *The issue of whether an area in a strata development is common property cannot be construed by reference to its mere utility of these areas/facilities to certain parcel owners. Nowhere is the concept of exclusive or special use provided for in the STA*. Maintenance charges imposed on the parcel owners by the management corporation is for the maintenance and management of all the common areas in the strata development. *Crest Tower is part and parcel of the 3 Two Square, and it so happens that the Plaintiff owns all the strata units in Crest Tower, but that does not mean that the Plaintiff as proprietor of all strata parcel units in Crest Tower has to manage and maintain the cooling tower*; lifts and public toilets in Crest Tower or for that matter any other common property in that tower block.

A [33] *The fact that the Plaintiff is the only proprietor of the strata parcels in Crest Tower is simply a matter of circumstance. The Plaintiff is at liberty to dispose any one or more of its parcels to any third party. And if it does, the facilities in issue, such as the centralized air-conditioning*, as well as the lifts and toilets located at Crest Tower *would be capable of being used by these future owners in common with the Plaintiff, its employees, agents and tenants*. In this regard, we entirely
B agree with the learned High Court judge when he held that: "*... the proper categorization of a facility as common property cannot depend on the identity of the proprietor in question, as an absurd result will arise if the facility is not considered common property on one day (and thus need not be maintained by the management corporation) but would be considered common property once the proprietor sells one*
C *of his parcels to a third party. It is well established that the court may favour an interpretation of statute that does not lead to an absurd result: see the dicta of Denning MR in Northman v. Barnett London Borough Councilas applied by the Federal Court recently in Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Berhad v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] 4 CLJ 265; [2017] 1 LNS 296." Hence, we are fully in accord with the learned trial judge's finding*
D *that the onus and responsibility for the maintenance and upkeep of these facilities in Crest Tower rests with the management corporation*.

(emphasis added)

[50] In the High Court, the relevant reasoning is set out as follows:

Common Property

E The Background Relating To The Parties' Contentions

[26] A key issue affecting the determination of a substantial portion of the plaintiff's claim is the *proper categorisation of certain facilities located in Crest Tower. These facilities include the central cooling tower*, toilets and lifts. *The parties dispute whether such facilities should be maintained by the management corporation,*
F *or whether the plaintiff, as the owner of the parcels located in Crest Tower, should bear the costs and expenses of operating and maintaining such facilities*.

[27] The plaintiffs position was that these facilities are "common property" within the meaning of the Strata Titles Act 1985 and the Building and Common Property (Maintenance and Management) Act 2007. Because
G the responsibility to manage and maintain common property lies with the management corporation, the plaintiff contended that it was entitled to not only the costs that it had expended in maintaining the relevant facilities, but also to compel the management corporation to maintain such facilities.

H [28] *The utility of these facilities accrues substantially (even if not exclusively) to the occupiers of Crest Tower. For example, unlike Crest Tower, none of the other blocks in 3 TwoSquare has central air-conditioning. The parcels in these other blocks are cooled by split air-conditioning units installed by the respective parcel owners within their own parcels. Thus, the costs of operation and maintenance of these split units fall to the respective parcel owners. By contrast, Crest Tower is installed with central*
I *air-conditioning, the costs of operating and maintenance of which are not insubstantial. The argument was advanced* on behalf of the first to eighth defendants *that it would not be fair to the parcel owners of the other blocks in 3*

TwoSquare to contribute to the costs of operation and maintenance of the centralised air-conditioning system in Crest Tower, since they do not benefit from or enjoy the central air-conditioning.

...

[36] *In my judgment, this contention fails because the definition of "common property'" in the Strata Titles Act 1985 defines it by exclusion: common property is simply that which is not a parcel. Accordingly, there is no need for there to have been labels affixed to the relevant areas to be designated as common property; all the areas that are not identified as parcels will automatically be regarded as common property.*

...

[44] *Accordingly, the responsibility for the maintenance and upkeep of these facilities should fall on the management corporation.*

(emphasis added)

[51] It is clear from the decision and reasoning of the High Court and the Court of Appeal's decision in *3 Two Square* that:

(i) common property is all that part of the development which is not contained in any parcel, irrespective of who enjoys the benefits thereof;

(ii) the management corporation is under a duty in law to maintain and manage common property;

(iii) that duty in law extends to bearing the operating costs of equipment located on common property; and

(iv) that duty in law to bear operating costs includes bearing the electricity charges of centralised air-conditioning facilities located on common property, which only serve one of six blocks of that development.

[52] The High Court judge in the instant case who no doubt considered herself bound by the decision of the Court of Appeal in *3 Two Square*, correctly applied those principles in the case and answered questions 1 and 2 in the affirmative, when finding that in the case of Menara UOA Bangsar, the:

(i) the CACF is located on outside any parcel, and is thus common property;

(ii) the "exclusivity" or extent of usage or benefit by owners of the Tower B, retail and car park parcels is irrelevant to the question of whether the CACF is common property; and

(iii) the management corporation has a duty to maintain and manage the CACF as a result.

A **[53]** In light of our reasoning above, questions no. 3, 4 and 5 is accordingly answered in the negative.

[54] Based upon the reasons given aforesaid, we find that the learned High Court Judge had committed no error that warranted appellate intervention.

B **[55]** In the premises, the appeal of AUM Capital ("appellant") is dismissed with costs of RM10,000 to the respondent subject to allocatur.

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